

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL CURTIS GARRETT,

Plaintiff,

- against -

NOT FOR PUBLICATION
ORDER
14-CV-2065 (CBA) (LB)

JOHN L. NORWOOD, FRANK STRADA,
KIMBERLY ASK-CARLSON, ERIC BRADLEY,
DOUG HESS, RICHARD WOLFE, DARNEL
RICHARDSON, JERMAINE WILKINS,
NICOLE WALLER, MARCIAL MUNDO,
KRISTY COX and DANIEL GARCIA,

Defendants.

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AMON, Chief United States District Judge.

Plaintiff initiated this action, proceeding pro se, on April 1, 2014 alleging various claims related to his pretrial detention at the Metropolitan Detention Center. (DE # 1.) Subsequently, plaintiff obtained counsel, Robert H. Parker, and Mr. Parker filed a notice of appearance on July 31, 2014. (DE # 6.)

On January 7, 2015, defendants requested leave to move for dismissal on the basis that plaintiff had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). At the pre-motion conference, plaintiff's counsel conceded that the Complaint, as currently drafted, was subject to dismissal for failure to exhaust, but argued that the exhaustion requirement should be waived because prison officials frustrated plaintiff's ability to seek relief through administrative channels. Based on that argument, the Court granted leave for plaintiff's counsel to file an amended complaint by February 24, 2015. (Minute Entry dated 2/3/2015.) At that conference, the Court also set a briefing schedule for defendants' motion to dismiss the action and scheduled oral argument for May 8, 2015. (Id.)


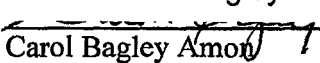
Plaintiff's counsel never filed an amended complaint nor did he request an extension of time to do so. In accordance with the schedule set by the Court, defendants served their motion to dismiss on March 17, 2015. (DE # 25.) Plaintiff's counsel did not oppose that motion nor did he request an extension of time to do so. (See DE # 26, 29.) On April 28, 2015, the Court directed defendants' counsel to file their motion unopposed. (Order dated 4/28/2015.) Plaintiff's counsel did not respond to that Order.

On May 8, 2015—the day of oral argument—the Court received a letter from plaintiff's counsel seeking to stay the action or voluntarily dismiss it pending the resolution of the criminal case against plaintiff. (DE # 29.) That letter acknowledged that “[t]his matter is currently scheduled for oral arguments concerning defendant’s [sic] un-opposed [sic] motion for summary judgment [sic].” (*Id.*) And although counsel sought to stay or dismiss the action, he notably did not request an adjournment of oral argument. (*Id.*) Yet, plaintiff's counsel did not appear at oral argument. After taking an appearance from defendants' counsel, the Court confirmed, on the record, that defendants have no objection to the voluntary dismissal of this action.

Accordingly, the Court dismisses this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and directs the Clerk of Court to close the case. The Court further orders plaintiff's counsel Robert H. Parker to show cause, within 10 days, why he should not be sanctioned for his failure to appear at oral argument.

SO ORDERED.

Dated: May 8, 2015
Brooklyn, New York


/s/ Carol Bagley Amon

Carol Bagley Amon
Chief United States District Judge